IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

OP.No. 7390 of 2003(D)

PETITIONERS:
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1. **RUGMINI, D/O.MANEERI NANU, ERNAD TALUK, VALLUVAMBRAM AMSOM, PULLANNOOR DESOM, MALAPPURAM DISTRICT.**

2. **VISALAKSHI, D/O.MANEERI NANU, VAZHAYIL HOUSE, ERNAD TALUK, PUDUKODE AMSOM DESOM, MALAPPURAM DISTRICT.**

BY ADV. SRI.R.RAJESH KORMATH
SMT.PREETHY KARUNAKARAN
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE
SMT.SANJANA R.NAIR

RESPONDENTS:
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1. **PUTHILLAN VIJAYALAKSHMY, ERNAD TALUK, KALIKAVU AMSOM, THRIKKUNNASSERI DESOM, MALAPPURAM DISTRICT.**

2. **ANIL BABU, S/O.MANEERI NARAYANAN, DO. DO.**

3. **SUNIL ALIAS SUNIL RAJ, S/O.MANEERI NARAYANAN, DO. DO.**

4. **SREEKALA, D/O.MANEERI NARAYANAN, DO. DO.**

5. **BABY ALIAS SURESH, S/O. MANEERI NARAYANAN, DO. DO.**

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6. CHANDRAMATHY, W/O.K.T.ACHUTHAN,
Q.NO. G.9/19, NEAR SARDAR PATEL SCHOOL,
SOUTH T.T. NAGAR, BHOPAL, MADHYAPRADESH
PIN 462003.

7. SAROJINI, W/O.MOOPPIL BHARATHAN,
P.O.MANGATTIRI, TIRUR, MALAPPURAM DISTRICT
PIN 676 105.

BY ADV. SRI.K.V.SOHAN - R1 TO R5

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.7390/2003

ORDER ON CMP. NNO.12890/2003 IN OP. NO.7390/2003

DISMISSED

30.07.2007 **SD/- M.N.KRISHNAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 26.10.02 IN IA. NO.1434/02 IN OS. NO.227/1992 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE, MANJERI.

/TRUE COPY/

P.S. TO JUDGE

tss

M.N.KRISHNAN, J

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O.P. No.7390 OF 2003

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Dated this the 30th day of July, 2007

JUDGMENT

This writ petition is filed to set aside the order passed in I.A.No.1434 of 2002 in O.S.No.227 of 1992 of the Sub Court, Manjeri. The suit is one for partition. It is the case of the plaintiffs that they did not have the custody of the original document at the time of the institution of the suit and the plaint schedule is incorporated on the basis of the enquiry and information regarding the same. Defendants filed their written statement and had also specifically stated about the number of documents in the written statement. But, they had produced them at a later stage. It is true that the plaintiffs shouts have taken some serious steps to get the certified copy of the documents, since they themselves were not aware of the real schedule of the property at the stage of filing of the plaint. Whatever it may be, now a situation has arisen whereby the documents are before the court. Now the question to be considered is regarding the schedule of the properties contained in the documents. Whether the property belongs exclusively to the defendants or it is partible property for the plaintiffs, it has to be

considered by the court below only after evidence. By incorporating these properties to the schedule of the plaint, the character of the suit will not be changed and by virtue of the amendment of the schedule, what is attempted to be projected is regarding the correct identification of the property which is sought to be partitioned.

Therefore, I feel that the court below had erred in not allowing the amendment application. Therefore the order under challenge is set aside and the amendment application is allowed. It is made clear that defendants are at liberty to file additional written statement raising all contentions in support of their claim.

O.P. is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-